

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of Petition

of

STUYVESANT INSURANCE COMPANY

For refund of franchise tax under
Section 187 of Article 9 of the
tax law for 1968.

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Stuyvesant Insurance Company having filed a petition for refund of franchise tax for 1968 and a hearing having been held in connection therewith at the offices of the State Tax Commission in New York City on February 9, 1971 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Ernest F. Gale, Vice President of the taxpayer, Michael Shapiro, President of Michael Shapiro Agency, Inc., and Samuel D. Muney, Secretary of Public Service Mutual Insurance Company, appeared personally and testified, together with William Glatzer, Esquire, of Glatzer, Glatzer and Davis, Counsel for the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated in New York on January 28, 1851 and is licensed by the Insurance Department of the State of New York to do an insurance business in New York.

(2) On January 30, 1969, the taxpayer was notified by letter from the Insurance Department that the service charge retained by a sub-agent is properly includable in taxable premiums under Section 187 of Article 9. On February 28, 1969

the taxpayer filed its report and paid the tax on taxable premiums, including service charges retained by sub-agents of the taxpayer.

(3) On April 22, 1970, a claim for refund of \$6,750.00 was filed on the basis that service charges are not includable in taxable premiums. The refund claim was denied and the taxpayer timely filed petition for refund.

(4) Michael Shapiro Agency, Inc. is the general agent for the Stuyvesant Insurance Company. Michael Shapiro Agency, Inc. appoints sub-agents who are authorized to write bail bonds as sub-agents of Stuyvesant Insurance Company.

(5) The sub-agent has a power of attorney to issue bail bonds on behalf of Stuyvesant Insurance Company and is required to furnish a copy of the power of attorney with each bail bond it issues.

(6) An applicant would obtain a bail bond of Stuyvesant Insurance Company at the office of a sub-agent by furnishing to the sub-agent:

(a) An application containing the name of the defendant, the section of the penal code under which he is charged, the court in which the case is to be tried and the amount of bail required for his release.

(b) An agreement by the applicant to indemnify Stuyvesant Insurance Company for costs and forfeitures, if the defendant does not appear in court as required, plus collateral acceptable to the sub-agent.

(c) Payment of the premium fixed by Section 331.4 of the Insurance Law.

(7) Section 331.4 of the Insurance Law states:

"The premium or compensation for giving a bail bond or depositing money or property as bail shall not exceed five per centum of the amount of such bond or deposit

where such bonds or deposits do not exceed the sum of one thousand dollars. Where such bonds or deposits exceed the sum of one thousand dollars the premium shall not exceed five per centum of the first one thousand dollars and four per centum of the excess amount over one thousand dollars up to two thousand dollars and three per centum of the excess amount over two thousand dollars, provided, however, that in the case where the amount of the bond or deposit is less than two hundred dollars a minimum premium of ten dollars may be charged."

(8) The sub-agent remits 2% of the face amount of the bail bond to Michael Shapiro Agency, Inc., general agent for Stuyvesant Insurance Company, and retains the remainder of the premium fixed by Section 331.4 of the Insurance Law for services performed by him. Michael Shapiro Agency, Inc. retains one-half of the sub-agent's remittance for its services as general agent and remits the other one-half to the Stuyvesant Insurance Company.

(9) Section 187.1 of Article 9 of the tax law reads, in part:

"Except as hereinafter provided, every domestic insurance corporation other than one transacting the business of life insurance, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums * * *."

(10) Section 550.1 of the Insurance Law defines "premiums" for purposes of taxation as follows:

"'Premium' includes all amounts received as consideration for insurance contracts or reinsurance contracts, other than for annuity contracts, and shall include premium deposits, assessments, policy fees, membership fees, and every other compensation for such contract."

(11) The common usage definition of "gross" as contained in standard reference dictionaries is total, whole, without any deduction.

(12) The common usage definition of "direct" as contained in standard reference dictionaries is immediate, by the shortest course, without interruption or diversion.

Based on the foregoing findings and all the evidence presented, the State Tax Commission hereby

DECIDES:

(A) "Premium", as defined in Section 550.1 of the Insurance Law and as computed under Section 331.4 of the Insurance Law, is the premium which is taxable under Section 187.1 of Article 9 of the Tax Law and the words "gross" and "direct" merely emphasize that no deduction whatsoever may be allowed. In the case of *Guardian Life Insurance Company V. Chapman*, 302 N.Y. 226, 97 N.E. 2d 877 (1951), the Court of Appeals held that the two laws (Tax Law and Insurance Law) are in pari materia and must be read together and applied harmoniously and consistently.

(B) The premium which is paid by the applicant for a bail bond and collected by the sub-agent on behalf of Stuyvesant Insurance Company in accordance with the fee schedule contained in Section 331.4 of the Insurance Law constitutes gross direct premiums as defined in Section 187.1 of Article 9 of the Tax Law.

(C) Payments made for 1968 do not include any taxes which could not be legally demanded and petition for refund is respectfully denied.


Dated: Albany, New York

this 6th day of June 1971.

STATE TAX COMMISSION


President


Commissioner


Commissioner

**BUREAU OF LAW
MEMORANDUM**

TO

FROM :

SUBJECT:

State Tax Commission**Saul Heckelman, Director****Section 187, subdivision 1, of the Tax Law -
Re: Stuyvesant Insurance Company v. State
Tax Commission**

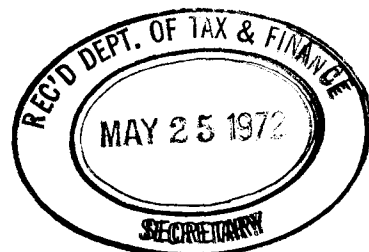
Attached hereto please find unanimous decision of the Appellate Division, Third Department, sustaining the decision of the State Tax Commission which held that although only a portion of the charge for bail bonds is remitted to the insurer, the balance being retained by both the bail bondsman and the general agent of the insurance company, the entire charge for the bail bond is a premium as defined by Section 550, subdivision 1, of the Insurance Law and is taxable pursuant to Section 187, subdivision 1, of the Tax Law.

It is not known at this time whether leave to appeal will be requested by the insurance company, and if so, whether or not the same will be granted by either the Appellate Division or the Court of Appeals.

Director

MS:ac
May 24, 1972
Enc.

cc: Edward Doran, Director
Edward Rook, Secretary



Supreme Court—Appellate Division
Third Judicial Department

M. McInerney

May 18, 1972.

18691

In the Matter of STUYVESANT INSURANCE
COMPANY, Petitioner,
v.
STATE TAX COMMISSION, Respondent.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Third Judicial Department by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission, which denied petitioner's claim for a refund of \$6,750 paid pursuant to section 187 of the Tax Law.

Petitioner, a domestic insurance company authorized to write several types of insurance, has its New York State bail bond business handled by a general agent, Michael Shapiro Agency, Inc. The general agent in turn appoints subagents who are authorized to write bail bonds for petitioner and collect the premiums. The subagents remit 2% of the face amount of the bail bond to Michael Shapiro Agency, Inc., retaining the remainder of the premium fixed by subdivision 4 of section 331 of the Insurance Law for services performed by them. The general agent retains one half of the subagents' remittances for its services as general agent and remits the remainder to petitioner.

Prior to the filing of its annual franchise tax report, pursuant to subdivision 1 of section 187 of the Tax Law for the year 1968, petitioner had been reporting as premiums subject to the franchise tax only the amounts remitted by the subagents to Michael Shapiro Agency, Inc. Pursuant to direction of the State Insurance Department, petitioner included in its annual franchise tax report for the year 1968 the entire amount paid by bail bond applicants to the subagents and paid \$6,750 in excess of what it claimed was due.

In May, 1970, petitioner filed a petition with the State Tax Commission for refund of \$6,750. After hearing, the petition was denied, the State Tax Commission finding that the premium paid by an applicant for a bail bond and collected by the subagent on behalf of petitioner in accordance with the fee schedule contained in subdivision 4 of section 331 of the Insurance Law, constitutes gross direct premiums as defined in subdivision 1 of section 187 of the Tax Law. Petitioner contends that subdivision 1 of section 187 of the Tax Law does not apply to anything other than the remittance to its general agent, because the entire payment collected by the subagent is never received by petitioner and is therefore not a "premium" as defined by subdivision 1 of section 550 of the Insurance Law.

Supreme Court—Appellate Division
Third Judicial Department

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The sum sought to be taxed herein is an integral part of the charge for a bail bond and, as such, it is a premium as defined by subdivision 1 of section 550 of the Insurance Law and is taxable pursuant to subdivision 1 of section 187 of the Tax Law (Matter of Inter-County Title Guar. & Mtge. Co. v. State Tax Comm., 33 A D 2d 251, affd. 28 N Y 2d 179; cf. Matter of Mutual Life Ins. Co. of N.Y. v. New York State Tax Comm., 38 A D 2d 95).

Determination confirmed and petition dismissed, with costs.

STALEY, JR., J. P., COOKE, SIMONS, KANE and REYNOLDS, JJ., concur.